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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/372,646
Filing Date: August 12, 1999
Appellant(s): JURGOVAN ET AL.

Richard Wydeven
For Appellant

EXAMINER'S ANSWER

MAILED

OCT 19 2001

GROUP 1700

This is in response to appellants' brief on appeal filed August 15, 2001.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

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The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-16 stand or fall together while claims 17-26 also stand or fall together, and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,617,683	Christoff	10-1986
5,224,779	Thompson et al	7-1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), walls of laminate materials (column 4, lines 4-23), a

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bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Christoff also teaches the use of known zipper configurations such as the rib and groove zipper exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff). Christoff does not specifically recite the use of potato chips as the packaged product, nor the top seal being a heat seal. It would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and also teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64), sealing the ends with sealing bars similar to the ones used to seal the fin (Figure 5, 35 & 39), and since heat seals were commonly used in the art for end seals as well. Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 and "pinch-grip pulling force applied to each of said front and rear walls below said zipper" in claim 17 are preferred methods of using the claimed package and therefore are not given patentable weight, in so much as the claimed package is capable of functioning and responding to such force.

3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not recite specific opening forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper as instantly claimed. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers, since Christoff is silent as to opening force required, and since Thompson et al teach that this was a common range of opening force for food packages consumed by the public (column 3, line 4).

(11) Response to Argument

Appellants argue that Christoff does not teach "a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together". However, Figure 3 of Christoff clearly shows this limitation.

Appellants argue that Christoff does not teach opening the package by gripping it below the zipper. As previously mentioned above, this is merely a preferred method of opening the claimed package. The Christoff package was capable of functioning as claimed, and thus the claims are not patentably distinguished from the prior art. Appellants also argue that this "represents a limitation defining structural features", yet

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do not specify or explain what supposed "structural features" are meant to be conveyed.

No such distinguishing features, patentable or otherwise, are noted.

In response to appellants' argument that the references fail to show certain features of appellants' invention, it is noted that the features upon which appellants rely (i.e., the top seal and zipper opened simultaneously by a single force) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It should also be noted that the product claims only recite an intended method of use by opening the zipper with a "pinch-grip opening force applied to said front and rear walls below said engagement members", and that the top seal is only required to be "manually pinch-grip openable" without specifying where this force is applied. It is submitted that these have been met by the structure of Christoff.

Appellant argues that Christoff does not teach "delamination" as a means to open the package. However, Christoff clearly teaches opening the package by delamination when it is stated that "Opening of the bag may be effected... by pulling the seal 42 at the top of the bag open" (column 6, line 35). Delamination is simply the act of separating layers, which in this case, was met by the opening of the sealed package.

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Art Unit: 1761

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Drew Becker
October 18, 2001

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PRIMARY EXAMINER


GREGORY MILLS
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TECHNOLOGY CENTER 1700
Appeal Conference

Mail Report Today's Mail

Case Number	Case Title	Case Date	Mail Type	Requester	Processing	Officer	Officer Name	Officer Title
29511 PTO	W00914-1372-DIV-1-	1/18/02	10/19/01	PTO MAIL-	RW	EXAMINER'S ANSWER		
Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV
29512 PTO	N01205-0004	1/18/02	1/14/02	PTO MAIL-	RJJ	DECISION ON		
Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV
29513 PTO	W01954-0344-PCT---	1/18/02	1/10/02	PTO MAIL-	EAF	PCT		
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29516 PTO	W02318-0190	1/18/02	1/11/02	PTO MAIL-	JLI	AA ADVISORY		
Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV
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Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV
29518 PTO	N01245-0005	1/18/02	12/6/01	PTO MAIL-	RJJ	OA NON-FINAL OA		
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29519 PTO	W02312-0105	1/18/02	1/15/02	PTO MAIL-	EAF	OA NON-FINAL OA		
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29520 PTO	N01365-0001	1/18/02	1/15/02	PTO MAIL-	RJJ	OA NON-FINAL OA		
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29522 PTO	W01751-0275	1/18/02	1/15/02	PTO MAIL-	GFR	OA NON-FINAL OA		
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29523 PTO	N01206-0326	1/18/02	1/15/02	PTO MAIL-	RJJ	OA NON-FINAL OA		
Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV
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Status: LOGGED				Courier Name:		Courier Track #:	1/18/02	COALV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER		

DECLARATION OF CECELIA BELL-GIBSON

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

I, Cecelia Bell-Gibson, declare as follows:

I am of legal age and have the mental capacity to make this declaration;

I am the Docket Coordinator for the firm of Rothwell, Figg, Ernst & Manbeck, P.C., and have held this position for approximately one year;

As Docket Coordinator, it is part of my responsibilities to ensure that incoming mail is processed according to office procedure;

The procedure of this office for processing incoming mail includes date-stamping all U.S. Patent and Trademark Office mail with the current date on the date that it is received in our office; further, all such mail is logged into a computer database listing, among other things, the date of receipt of such mail in our office.

I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Cecelia Bell-Gibson				
SIGNATURE	Cecelia Bell-Gibson			DATE	January 29, 2002
Address	Rothwell, Figg, Ernst & Manbeck Suite 701-East, 555 13th Street, N.W.				
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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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Washington, D.C. 20231

informed about 10/19/01
1/18/02 mgj

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646	08/12/99	JURGOVAN	M 914-1372DIV1
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IM52/1019

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EXAMINER

BECKER, D

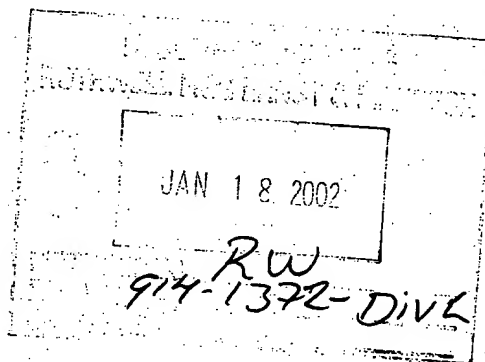
ART UNIT	PAPER NUMBER
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1761

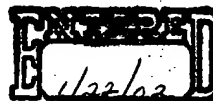
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Appeal Confirmed